

STATE OF NEW YORK
STATE TAX COMMISSION

In the Matter of Petition

of

CAPITAL CITIES COMMUNICATIONS, INC.
(formerly Capital Cities Broadcasting Corp.)

for redetermination of deficiency or refund
of franchise tax under Article 9-A of the
tax law for the calendar years 1966, 1967,
1968 and 1969

The taxpayer having filed petition as indicated above,
and a hearing having been held at the office of the State Tax
Commission at 80 Centre Street in New York City, at which hearing
Richard L. Goldman, Esq. and James Z. Gord, Esq. of Counsel, rep-
resented the taxpayer and Robert W. Gelles of taxpayer, Lawrence
Roslow of Pulse, Inc. and Jack Fritaxof John Blair and Company
appeared and testified and the record having been duly examined
and considered by the State Tax Commission,

It is hereby found:

(1) The taxpayer was incorporated on April 5, 1946,
under Laws of New York State and changed its name on May 4, 1973
to Capital Cities Communications, Inc.

(2) During 1966, 1967, 1968 and 1969, the taxpayer
maintained executive offices in New York and owned and operated
radio and television stations in New York, New Jersey, Rhode
Island, West Virginia, Michigan, North Carolina, Texas and Cal-
ifornia.

(3) Stations in Rhode Island, West Virginia, Michigan,
North Carolina, Texas and California have no facilities within New
York and are operated wholly outside New York. The studios and
transmission facilities of stations WROW, WKBW and WKBW-TV are
wholly in New York. Station WPAT has studios in New Jersey and
transmission facilities in New York. Station WTEN has studios
and transmission facilities in New York with additional trans-
mission facilities in Vermont and Massachusetts.

(4) In filing its franchise tax return for 1966, the taxpayer allocated receipts within and without New York based on the location of the studios in conformity with returns filed in prior years. Receipts of stations WROW, WTEN, WKBW and WKBW-TV were allocated 100% to New York and receipt of all other stations were allocated outside New York.

(5) In filing returns for 1967 and subsequent years, taxpayer allocated receipts within and without New York based on the location of its listening or viewing audience as indicated in publications of American Research Bureau and Pulse Organisation, independent research organizations which gather data by survey.

(6) Based on a field audit conducted by its New York City district office, notices of deficiency were issued by the Corporation Tax Bureau on July 15, 1969, computing deficiencies as follows:

1966

Adjusted entire net income	\$10,953,523
Adjusted allocation	37.14%
Base	4,068,138
Tax at 5½%	223,748
Tax paid	222,302
Deficiency	1,446

1967

Adjusted entire net income	\$12,982,238
Adjusted allocation	33.98%
Base	4,411,364
Tax at 5½%	242,625
Tax paid	219,669
Deficiency	22,956

For 1966 and 1967, broadcasting receipts were allocated as follows:

- (a) All broadcasting receipts of stations with studios and transmissions facilities wholly outside New York, were allocated outside New York,

(b) All broadcasting receipts of stations with studios and transmission facilities wholly in New York were allocated 100% to New York,

(c) Broadcasting receipts of stations with facilities within and without New York were allocated by applying a fraction to the total receipts of all stations with facilities within and without New York. This fraction was based on rents, property and wages of stations with facilities within and without New York as follows:

$$\frac{\text{N.Y. rents paid} + \text{N.Y. real and tangible property owned} + \text{N.Y. wages}}{\text{Total rents paid} + \text{total real and tangible property owned} + \text{total wages}}$$

(d) Based on this method, receipts of stations WROW, WKBW and WKBW-TV were allocated 100% to New York, receipts of stations WTEN and WPAT were allocated 62.29% to New York in 1966 and 63.33% to New York in 1967 and all other broadcasting receipts were allocated outside New York.

(7) Taxpayer timely filed a petition for redetermination of deficiency or refund in which it computed a refund due for 1966 of \$13,796 and a revised deficiency for 1967 of \$4,391. In its computation, the taxpayer allocated receipts within and without New York based on location of listening or viewing audience as in (5), above.

(8) Based on a field audit subsequently conducted, notices of deficiency were issued on June 15, 1971 as follows:

1968

Adjusted entire net income	\$16,098,444
Adjusted allocation	32.441 %
Base	5,222,496
Tax at 7%	365,575
Tax paid	332,228
Deficiency	33,347

1969

Adjusted entire net income	\$18,090,778
Adjusted allocation	32.808 %
Base	5,935,222
Tax at 7%	415,466
Subsidiary capital tax	1,567
Total tax	417,033
Tax paid	372,505
Deficiency	44,528

For 1968 and 1969, broadcasting receipts were allocated as follows:

- (a) All broadcasting receipts of stations with studios and transmission facilities wholly outside New York were allocated outside New York,
- (b) All broadcasting receipts of stations with studios and transmission facilities wholly in New York were allocated 100% to New York,
- (c) Broadcasting receipts of each station with facilities within and without New York was separately allocated within and without New York by applying a fraction to the receipts of such station. This fraction was based on rents, property and wages of the station as follows:

$$\frac{\text{N.Y. rents paid} + \text{N.Y. real and tangible property owned} + \text{New York wages}}{\text{Total rents paid} + \text{total real and tangible property} + \text{total wages}}$$

- (d) Based on this method, receipts of stations WROW, WKBW and WKBW-TV were allocated 100% to New York, receipts of station WTEN were allocated 94.92% to New York in 1968 and 93.55% to New York in 1969, receipts of station WPAT were allocated 38.32% to New York in 1968 and 39.62% to New York in 1969 and all other broadcasting receipts were allocated outside New York,
- (e) If the method of allocating receipts used in 1968 and 1969 was used in 1966 and 1967, receipts of station WTEN would have been allocated 97.06% to New York in 1966 and 96.20% to New York in 1967 and receipts of station WPAT would have been allocated 37.11% to New York in 1966 and 38.30% to New York in 1967. Tax recomputation using such method would result in added deficiencies of \$2,590 for 1966 and \$2,142 for 1967.
- (f) No claim for additional deficiency for 1966 and 1967 was asserted at or before the hearing.

(9) Taxpayer timely filed a petition for redetermination of deficiency or refund in which it computed a revised deficiency for 1968 of \$1,219 and a revised deficiency for 1969 of \$9,082.

(10) Webster's New Collegiate Dictionary (eighth edition) defines broadcast as the act of transmitting sound or images by radio or television.

(11) Section 210.3 (a)(2) of Article 9A of the Tax Law for 1966 reads in part, as follows:

"(2) Ascertaining the percentage which the receipts of the taxpayer, computed on the cash or accrual basis according to the method of accounting used in the computation of its entire net income, arising during such period from,

(E) services performed within the state, . . ."

((E) above was changed to (B) in 1968)

(12) Section 4.20c of Ruling of State Tax Commission with respect to the franchise tax on business corporations imposed by Article 9-A of the tax law states,

"c. Where a lump sum is received by the taxpayer for services performed within and without New York, the amount attributable to services within New York is to be determined on the basis of the relative value, of, or amounts of time spent in performance of, such services, within and without New York, or by some other reasonable method. . ."

(13) Section 1089 (d) states in part,

"(d) Assertion of deficiency after filing petition -
(1) Petition for redetermination of deficiency - if a taxpayer files with the Tax Commission a petition for redetermination of a deficiency, the Tax Commission shall have power to determine a greater deficiency than asserted in the notice of deficiency and to determine if there should be assessed any addition to tax or penalty provided in section one thousand eighty-five, if claim therefore is asserted at or before the hearing under rules of the Tax Commission."

The State Tax Commission hereby

DECIDES:

(A) The taxpayer earns its receipts by transmitting commercial messages for its customer, the advertiser, using its equipment and personnel to perform this service and such service constitutes broadcasting as defined in (10).

(B) Receipts from performing broadcasting service of a radio or television station, where all of the equipment and personnel engaged in performing the service are located in New York, are allocable 100% to New York in accordance with Section 210.3(a)(2) of the Tax Law quoted in (11).

(C) Receipts from performing broadcasting service of a radio or television station, where equipment and/or personnel engaged in performing the service are located within and without New York, are allocable within and without New York in accordance with the Section 4.20 c of Ruling of State Tax Commission quoted in (12).

(D) The method of allocating receipts in (8) conforms with the method adopted by the State Tax Commission in a Determination issued on June 15, 1966 in the Matter of Gotham Broadcasting Corporation and properly allocates receipts earned by performing broadcasting services of a station with facilities within and without New York.

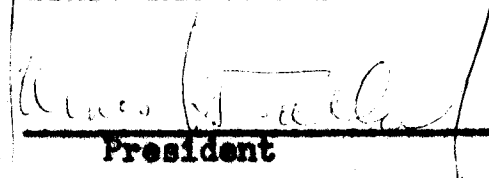
(E) Inasmuch as additional deficiencies for 1966 and 1967 (see (8)(f)) were not asserted at or before the hearing as required by (13) such additional deficiencies may not be assessed.

(F) Deficiencies for 1966 and 1967, as set forth in (6) and deficiencies for 1968 and 1969 as set forth in (8) are hereby affirmed, together with interest due in accordance with Section 1084 of the Tax Law.

Dated: Albany, New York

this 24th Day of November 1975

STATE TAX COMMISSION



President



Commissioner

Commissioner